

BEFORE THE BOARD OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF APPLICATION FOR
RESERVATION OF WATER NO. 9938-r42M
BY THE CITY OF GLENDIVE

}
} FINDINGS OF FACT AND CON-
} CLUSIONS OF LAW OF APPLI-
} CATION NO. 9938-r42M
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The above-entitled matter came on regularly for hearing starting on or about August 10, 1977, in Billings, Montana, before the Montana Board of Natural Resources and Conservation and its duly appointed Hearing Examiner, James Driscoll. The applicant appeared without aid of counsel. The Montana Department of Natural Resources and Conservation appeared by and through its counsel of record, Richard Gordon. The Montana Department of Health and Environmental Sciences appeared by and through its counsel of record, Mona Jamison. The Montana Department of Fish and Game appeared by and through its counsel of record, Clayton Herron and F. Woodside Wright. The fourteen applicant conservation districts appeared by and through their counsel of record, Gary Spaeth. The Montana Power Company appeared by and through its counsel of record, Robert Woodahl. Witnesses were duly sworn, and oral and documentary evidence was introduced.

The Board, having read and fully considered the complete record, makes the following Findings of Fact and Conclusions of Law relating to the City of Glendive, Application 9938-r42M:

FINDINGS OF FACT

1. The City of Glendive has applied for a reservation of 12,756.9 acre-feet of water per year (af/y), with a maximum diversionary flow rate of 17.62 cubic feet per second (cfs) from the Yellowstone River to be used for municipal water supply purposes for the year 2007 (Application No. 9938-r42M).

Findings Related to the Purpose of the Reservation (89-890(3)(a))

2. The purpose of the reservation is to ensure water availability and an adequate streamflow for the future needs of the City of Glendive (City of Glendive, narrative attachment submitted with Application No. 9938-r42M, p. 3).

3. It is established to the satisfaction of the Board that a purpose of the reservation has been shown (Finding 2).

Findings Related to the Need for the Reservation (89-890(3)(b))

4. A reservation of water is needed because it will secure a priority date for future developments that is earlier than the priority dates such developments would have if permits were obtained immediately before the construction or use began (Draft EIS, Vol. I, p. 1).

5. A reservation of water is needed because competition for Yellowstone River water, especially from irrigated agriculture and coal-related industry, exists (City of Glendive, narrative attachment submitted with Application No. 9938-r42M, p. 3).

6. A reservation of water is needed. The validity of the City of Glendive's existing filed appropriations for its municipal water supply has not been proven (Tr. Vol. 1, following p. 38, Testimony of A. T. Kersich, p. 5; City of Glendive, narrative attachment submitted with Application No. 9938-r42M, p. 1; Tr. Vol. 3, Cross of Kersich, p. 25).

7. A reservation of water is needed. The Yellowstone River water is the only practical, economic source of municipal water available to the City of Glendive

(City of Glendive, narrative attachment submitted with Application No. 9938-r42M, p. 3; Tr. Vol. 3, Cross of Kersich, p. 27; Tr. Vol. 1, following p. 38, Testimony of Kersich, p. 6).

8. A reservation of water is needed. It would be an assurance that the City of Glendive would have an adequate quantity of water available from the Yellowstone River for its municipal water supply (City of Glendive, narrative attachment submitted with Application No. 9938-r42M, p. 3; Tr. Vol. 1, following p. 38, Testimony of Kersich, p. 6).

9. In the future, coal production activity will increase the City of Glendive's water needs (Tr. Vol. 1, following p. 38, Testimony of Kersich).

10. Other business activity, including the construction of a slaughtering plant, will cause an increase demand for water by the City of Glendive (Tr. Vol. 3, Testimony of Kersich, pp. 30-31).

11. The City of Glendive can expect an increased population with associated increased water needs (City of Glendive, narrative attachment submitted with Application No. 9938-r42M, p. 2; Tr. Vol. 3, Cross of Kersich, p. 30; Tr. Vol. 1, following p. 38, Testimony of Kersich, p. 6).

12. The City of Glendive will need an increased water supply in the future (City of Glendive, narrative attachment submitted with Application No. 9938-r42M, p. 3).

13. It is established to the satisfaction of the Board that the need for a reservation of water has been shown (Findings 4 through 8).

Findings Related to Amount of Water Necessary for the Purpose of the Reservation
(89-890(3)(c))

14. The population of the City of Glendive in the year 1970 was 6,305 (Draft EIS, Vol. I, p. 174).

15. The amount of the City of Glendive's reservation request is based on a design population projection of 33,800 in the year 2007 (Tr. Vol. 1, following p. 38, Testimony of Kersich, p. 6).

16. A 701 Comprehensive Plan completed by an outside consultant in 1970 forecasts a low population of 13,400 and a high population of 14,100 for the City of Glendive for the year 1990 (City of Glendive, narrative attachment submitted with Application No. 9938-r42M, p. 2).
17. The expansion plans of the City of Glendive are dependent on such currently unknown growth factors as the extent of energy development in the region (City of Glendive, narrative attachment submitted with Application No. 9938-r42M, p. 4).
18. The design population projection of the City of Glendive is excessive and speculative and is not supported by the evidence.
19. Using the rate of growth indicated in the 701 Comprehensive Plan, the population for the City of Glendive for the year 2007 can be projected to be 18,000 people.
20. The average municipal per capita water use rate in the Yellowstone Basin in 1970 was 212 gpcd (Draft EIS, Vol. II, p. 405).
21. The average municipal per capita water use rate in Dawson County in 1970 was 179 gpcd (Draft EIS, Vol. II, p. 405).
22. The 500 gallons per capita per day utilized by the City of Glendive to compute their reservation request is excessive and not supported by evidence.
23. A reasonable average water use rate for the City of Glendive for the year 2007 is 250 gallons per capita per day.
24. With a population of about 18,000 and an average use rate of 250 gpcd, the City of Glendive would need 5,049 af/y in the year 2007.
25. With a population of 6,305 and an average use rate of 250 gpcd, the City of Glendive's estimated water use in the year 1970 was 1,768 af/y.
26. A reservation that would provide sufficient water to meet the city's projected increased requirements to the year 2007 is the difference between the projected requirements in 2007 (5,049 af/y) and the existing water usage (1,768 af/y).

27. It is established to the satisfaction of the Board that 3,281 af/y is the amount of water necessary for the purpose of the reservation to the year 2007.

Findings Related to the Public Interest (89-890(3)(d))

28. Municipal water use is a recognized beneficial use of water under Montana law (City of Glendive, narrative attachment submitted with Application No. 9938-r42M, p. 4).

29. Adoption of a reservation for the City of Glendive would have a negligible environmental impact (Draft EIS, Vol. I, p. 174).

30. At this time, about 40 percent of the flow diverted for the City of Glendive is returned to the Yellowstone River (Tr. Vol. 3, Cross of Kersich, p. 32).

31. Adoption of a reservation for the City of Glendive would not reduce the flow of the Yellowstone River significantly (Draft EIS, Vol. I, pp. 173 and 174; Tr. Vol. k, following p. 38, Testimony of Kersich, p. 6).

32. Adoption of a reservation for the City of Glendive would contribute to the public health (City of Glendive, narrative attachment submitted with Application No. 9938-r42M, p. 4).

33. Adoption of a reservation for the City of Glendive would provide economic benefits and contribute to community planning, and orderly growth and development (City of Glendive, narrative attachment submitted with Application No. 9938-r42M, pp. 3 and 4; Tr. Vol. 3, Cross of Kersich, p. 31; Tr. Vol. l, following p. 38, Testimony of Kersich, p. 6).

34. It is established to the satisfaction of the Board that the reservation of 3,281 af/y from the Yellowstone River for the City of Glendive for municipal water supply purposes is in the public interest, and that there will be progress toward accomplishment of the purpose of the reservation with reasonable diligence in accordance with an established plan (Findings 1 and 28 through 33; City of Glendive, Application No. 9938-r42M).

CONCLUSIONS OF LAW

1. Chapter 8, Title 89, R.C.M. 1947, and in particular, Section 89-890, R.C.M. 1947, authorize the adoption by the Montana Board of Natural Resources and Conservation of orders reserving water to qualified applicants for reservation of water.
2. If ordered adopted, a reservation must be ordered adopted in accordance with Chapter 8, Title 89, R.C.M. 1947, and any rules adopted thereunder.
3. The Applicant, City of Glendive, is a political subdivision of the State of Montana and as such is entitled to apply to reserve waters within the State of Montana in accordance with 89-890, R.C.M. 1947, and any rules adopted thereunder.
4. All pertinent statutes and rules of the State of Montana have been adhered to in review of this reservation application, both by the Montana Department of Natural Resources and Conservation and by the Montana Board of Natural Resources and Conservation.
5. Based upon the above Findings of Fact, and specifically based upon any condition, limitation, or modification of the full application appearing in said Findings, all pertinent criteria delineated in Section 89-890, R.C.M. 1947, and any rules adopted thereunder providing for the adoption of an order reserving water have been met.
6. Nothing found herein has bearing upon the status of water rights claimed by the Applicant other than those herein newly applied for, nor does anything found herein have bearing on the status of claimed water rights of any other party except in relation to those rights herein newly applied for, to the extent necessary to reach a conclusion herein.